

EXHIBIT 1

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION
4
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6 IN RE: HIGH-TECH EMPLOYEE)
7 ANTITRUST LITIGATION)
8) No. 11-CV-2509-LHK
9 THIS DOCUMENT RELATES TO:)
10 ALL ACTIONS.)
11 _____)
12
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14 CONFIDENTIAL - ATTORNEYS' EYES ONLY
15 VIDEO DEPOSITION OF MARK BENTLEY
16 August 23, 2012
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20 REPORTED BY: GINA V. CARBONE, CSR NO. 8249, RPR, CCRR
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09:07:00 1 in front of the jury in this case?

09:07:01 2 A. I do.

09:07:02 3 Q. And do you understand that you have an
09:07:03 4 obligation to tell the truth today?

09:07:05 5 A. I do.

09:07:06 6 Q. Now, if you don't understand my questions,
09:07:09 7 would you please let me know and I'll do my best to
09:07:11 8 rephrase them. Do you understand that?

09:07:13 9 A. I will do that.

09:07:14 10 Q. Okay. And have you had your deposition taken
09:07:17 11 before?

09:07:18 12 A. Have I had a deposition taken before?

09:07:20 13 Q. Yes.

09:07:20 14 A. Yes, I have.

09:07:21 15 Q. Okay. So I'm -- if -- I'm going to assume some
09:07:26 16 familiarity with the process. It's important for the
09:07:29 17 reporter to get clean answers, so will you let me finish
09:07:31 18 my question before you answer it?

09:07:33 19 A. Okay.

09:07:34 20 Q. And will you try to do your best to answer my
09:07:37 21 questions audibly?

09:07:38 22 A. Yes, I will.

09:07:45 23 Q. With what companies did Apple have
09:07:49 24 no-cold-calling agreements?

09:07:51 25 MR. RILEY: Objection. Assumes facts.

09:07:58 1 THE WITNESS: Can you please repeat the
09:07:59 2 question.
09:07:59 3 MR. SAVERI: Read it back, please.
09:08:01 4 (Record read as follows: With what companies
09:08:01 5 did Apple have no-cold-calling agreements?)
09:08:06 6 MR. SAVERI: Let me make sure I get this right.
09:08:08 7 Q. With what companies did Apple have
09:08:13 8 no-cold-calling agreements?
09:08:15 9 MR. RILEY: Same objection.
09:08:16 10 THE WITNESS: There is only one company that I
09:08:18 11 know of in which we had a -- an agreement not to cold
09:08:22 12 call.
09:08:23 13 MR. SAVERI: Q. And what company is that?
09:08:25 14 A. That was Google.
09:08:29 15 Q. Can you describe for me generally what you
09:08:43 16 understood -- strike that.
09:08:46 17 Could you describe for me generally what the
09:08:48 18 terms of that agreement with Google were.
09:08:53 19 A. I will answer that question to the best of my
09:08:55 20 ability. It was somewhat dynamic. There was a period
09:08:58 21 of time, given our business relationship with Google
09:09:02 22 going back a few years ago, in which we did not actively
09:09:07 23 cold call into the company, although we were still
09:09:09 24 recruiting.
09:09:15 25 Q. And when did that agreement begin?

09:09:20 1 A. I don't remember exact dates, but it was prior
09:09:23 2 to Eric Schmidt becoming a board member of Apple.
09:09:30 3 Q. Could you give me the approximate year.
09:09:36 4 A. I'm taking a guess here.
09:09:38 5 Q. Give me your best recollection of when it
09:09:40 6 began.
09:09:43 7 A. 2005.
09:09:44 8 Q. Were you working with Apple at the time?
09:09:47 9 A. Yes, I was working with Apple.
09:09:50 10 Q. And who told you first about the agreement?
09:09:56 11 A. I'm not sure -- I didn't necessarily know there
09:09:58 12 was an agreement in place before I understood that we
09:10:00 13 were not actively cold calling out of Google.
09:10:04 14 Q. Okay.
09:10:04 15 A. And that understanding came from my boss who
09:10:06 16 was Danielle Lambert who was vice president of HR.
09:10:12 17 (Reporter clarification.)
09:10:12 18 MR. SAVERI: Q. Now, Mr. Bentley, you
09:10:15 19 are -- you seem a little soft spoken to me. It's
09:10:17 20 really important that you keep your voice up,
09:10:19 21 particularly in this room, so at least we have a
09:10:21 22 good record of that. Okay?
09:10:23 23 A. Okay.
09:10:23 24 Q. Thank you.
09:10:25 25 A. So I'm soft spoken as it is, but I'll do my

09:10:30 1 best.

09:10:30 2 Q. And I -- I suffer from the same flaw. So let's
09:10:34 3 do our best to at least fill this part of the room with
09:10:39 4 our voices. Okay?

09:10:41 5 A. Understood.

09:10:42 6 Q. Did Ms. Lambert -- well, strike that.
09:10:50 7 What did Ms. Lambert tell you when she informed
09:10:52 8 you about the -- the policy with respect to no cold
09:10:58 9 calling Google employees?

09:11:02 10 A. I did not necessarily know there was a policy
09:11:04 11 in place. It was my understanding that we were not
09:11:08 12 recruiting out of Google at the time -- excuse me -- we
09:11:11 13 were not cold calling into Google because of the
09:11:14 14 strategic relationship with Google.

09:11:17 15 Q. Did Ms. Lambert tell you that?

09:11:20 16 A. I believe on occasion we had talked about it.

09:11:22 17 Q. When you heard about it the first time, did you
09:11:24 18 hear about it from Ms. Lambert?

09:11:28 19 A. I believe so.

09:11:28 20 Q. And did she communicate that to you in person
09:11:32 21 or in writing?

09:11:34 22 A. I don't recall.

09:11:47 23 Q. And can you describe for me generally what
09:11:50 24 restrictions you understood that -- could you tell me
09:12:00 25 generally what the restrictions that Ms. Lambert was

09:12:05 1 describing put on your job or your responsibilities with
09:12:08 2 respect to recruiting?

09:12:11 3 A. At the time that -- at the time that this
09:12:14 4 occurred, I was the director of the executive search
09:12:17 5 team, and I managed approximately a 12-person team. And
09:12:22 6 it was my understanding that we were not to actively
09:12:25 7 cold call into Google. We were still hiring from
09:12:30 8 Google.

09:12:31 9 Q. Did you understand at the time that Google had
09:12:34 10 agreed to adopt a similar policy or practice with
09:12:37 11 respect to the recruiting of Apple employees?

09:12:40 12 MR. RILEY: Objection to the form of the
09:12:41 13 question.

09:12:44 14 THE WITNESS: I did not. I did not necessarily
09:12:47 15 know that there was a -- I did not know what Google's
09:12:51 16 understanding was.

09:12:52 17 MR. SAVERI: Q. Okay. At what point in
09:12:54 18 time did you understand that there was an agreement
09:12:56 19 between Google and Apple with respect to no cold
09:13:00 20 calling?

09:13:01 21 A. I don't remember the approximate dates.

09:13:03 22 Q. Could you give me, generally, a time or a
09:13:05 23 milestone or a year?

09:13:06 24 A. I believe it may have been end of 2005, maybe
09:13:11 25 beginning of 2006.

09:13:12 1 Q. Who told you there was an agreement?

09:13:16 2 A. Again, it wasn't clear to me that there was
09:13:18 3 actually an agreement in place. I had -- I had seen an
09:13:23 4 email from my boss.

09:13:25 5 Q. And when you say your boss, are you talking
09:13:27 6 about Ms. Lambert?

09:13:30 7 A. Danielle Lambert.

09:13:34 8 Q. And is the -- was the email from Ms. Lambert
09:13:41 9 the first time you understood there was an agreement
09:13:44 10 between Google and Apple with respect to no cold
09:13:47 11 calling?

09:13:50 12 A. It was my understanding there was an
09:13:52 13 understanding. I'm not sure I'd characterize it as an
09:13:54 14 agreement.

09:13:54 15 Q. Okay. Fair enough. Maybe "agreement" is a
09:13:57 16 lawyer's word. But at least at that point in time, you
09:14:00 17 understood there was an understanding between Google and
09:14:03 18 Apple with respect to no cold calling. Is that fair?

09:14:06 19 A. That is fair. It was my understanding that
09:14:08 20 this was not unilateral.

09:14:27 21 Q. Did you understand the understanding applied to
09:14:30 22 all employees of Google and Apple?

09:14:34 23 MR. RILEY: Objection. Question is vague.

09:14:39 24 THE WITNESS: It was my understanding that we
09:14:40 25 were not to cold call into Google.

09:14:44 1 MR. SAVERI: Q. At all?

09:14:46 2 A. That was my understanding.

09:14:59 3 Q. At the time that you learned of this
09:15:01 4 understanding, were there business collaborations
09:15:05 5 between Apple and Google?

09:15:06 6 A. It was my understanding there was.

09:15:09 7 Q. Was the understanding, with respect to no cold
09:15:13 8 calling, limited in any way to the persons working on
09:15:16 9 those projects or collaborations?

09:15:21 10 MR. RILEY: Objection. No foundation.

09:15:24 11 THE WITNESS: My understanding that we were
09:15:25 12 working across a large swath of -- both companies were
09:15:30 13 working with each other across a large swath of the
09:15:33 14 company.

09:15:34 15 MR. SAVERI: Q. So -- but my question was,
09:15:36 16 was the understanding limited in any way to the
09:15:41 17 persons working on those collaborations or projects
09:15:44 18 between the two companies?

09:15:45 19 MR. RILEY: Objection. No foundation.

09:15:54 20 THE WITNESS: I don't recall.

09:15:57 21 MR. SAVERI: Q. And when you say "I don't
09:15:58 22 recall," do you mean no, or do you mean you don't
09:16:00 23 have a recollection?

09:16:03 24 A. Meaning, as I think back about this now, Google
09:16:06 25 was a much smaller company back then, and they were

09:40:36 1 Lambert.

09:40:38 2 Q. And did you understand that she passed that
09:40:40 3 complaint on to Mr. Jobs?

09:40:42 4 A. I did understand that.

09:40:44 5 Q. And you understood that Mr. Jobs passed that
09:40:47 6 complaint on to Mr. Schmidt; correct?

09:40:49 7 A. Yes.

09:40:51 8 Q. And did you understand that, for example,
09:40:54 9 Mr. Schmidt terminated people at Google as a result of
09:40:58 10 this?

09:40:59 11 MR. RILEY: Objection. No foundation.

09:41:02 12 THE WITNESS: That's not my understanding.

09:41:04 13 MR. SAVERI: Q. Okay.

09:41:05 14 A. I don't know if Mr. Schmidt terminated someone
09:41:09 15 at Google specifically because of this. I'm not sure if
09:41:13 16 there were other variables involved or not.

09:41:19 17 Q. Okay. Did Apple ever receive complaints from
09:41:23 18 Google about -- strike that.

09:41:26 19 Did Apple ever receive complaints from Google
09:41:31 20 to the effect that Apple had violated its understanding
09:41:34 21 with Google?

09:41:41 22 A. I don't recall.

09:41:44 23 Q. Is it your testimony that Apple never received,
09:41:48 24 to the best of your recollection, any complaints from
09:41:50 25 Google to that effect?

09:41:53 1 A. It is the best of my recollection that we never
09:41:57 2 received any complaints about cold calling into Google.
09:42:02 3 I don't know if there was any complaints received about
09:42:06 4 recruiting out of Google.

09:42:08 5 Q. Did you, from time to time, check with the
09:42:11 6 people that you supervised to ensure that they were
09:42:15 7 complying with the understanding with Google?

09:42:24 8 A. There was -- there were times in which there
09:42:28 9 was communication between me and some of the folks on my
09:42:32 10 team about clarifying one's candidacy at Apple from
09:42:42 11 Google.

09:42:43 12 Q. Isn't it true that after you complained about
09:42:46 13 Google violating the understanding, that you checked
09:42:52 14 with the people that worked for you at Apple to make
09:42:56 15 sure that no one at Apple had violated that
09:42:59 16 understanding?

09:43:00 17 A. I believe I may have done so.

09:43:05 18 Q. Did Apple have a no-cold-calling agreement with
09:43:07 19 Adobe?

09:43:16 20 A. That's not my understanding. It's my
09:43:19 21 understanding that we had -- there was sensitivity
09:43:23 22 involved, in periods of time, with Apple cold calling
09:43:27 23 into Adobe because of our business relationship. I
09:43:32 24 don't know if -- there was no agreement in my mind.

09:43:45 25 Q. Okay. I -- I don't understand your last

09:43:49 1 answer. Let me ask the question again. Is it your
09:43:51 2 testimony that there was or was not an agreement between
09:43:54 3 Apple and Adobe with respect to cold calling?

09:43:57 4 A. It's my understanding that we had -- Adobe was
09:44:01 5 on our sensitive list for periods of time because of our
09:44:05 6 business relationship. I don't know -- I have no idea
09:44:08 7 if there was an agreement between Apple and Adobe as it
09:44:10 8 relates to cold calling into each other's companies.

09:44:15 9 Q. And when you say you "have no idea," what do
09:44:18 10 you mean?

09:44:21 11 A. Meaning, I don't know what was discussed.

09:44:22 12 Q. Okay.

09:44:23 13 A. I don't know what was discussed, if things were
09:44:25 14 discussed, how it was discussed.

09:44:28 15 Q. Were you told, by Ms. Lambert or someone else
09:44:31 16 at Apple, that there was an agreement between Apple and
09:44:34 17 Adobe with respect to cold calling?

09:44:38 18 And maybe I should use a better -- let me
09:44:41 19 withdraw that question.

09:44:42 20 Were you told by Ms. Lambert, or someone else
09:44:44 21 at Apple, that there was an understanding between Apple
09:44:47 22 and Adobe with respect to cold calling?

09:44:53 23 A. I don't recall. Specifically I recall there
09:44:58 24 being sensitivity about cold calling in Adobe because of
09:45:00 25 our business relationship; and frankly, that was very

09:45:04 1 dynamic.

09:45:25 2 Q. Are you aware that in the Department of
09:45:30 3 Justice's Competitive Impact Statement, in the case
09:45:36 4 against Apple and others with respect to these
09:45:40 5 cold-calling agreements, that the Government stated that
09:45:43 6 beginning no later than May 2005, Apple requested an
09:45:47 7 agreement from Adobe to refrain from cold calling each
09:45:50 8 other's employees?

09:45:53 9 MR. RILEY: Objection. No foundation.

09:45:58 10 THE WITNESS: I'm not aware of that. The
09:45:59 11 reason I'm having trouble with this one is I was
09:46:05 12 specifically involved in recruiting an executive out of
09:46:11 13 Adobe. Actively recruiting somebody out of Adobe. I'm
09:46:14 14 not sure what time frame that was and if it's within
09:46:16 15 these time zones.

09:46:18 16 MR. SAVERI: Q. You said "an executive."
09:46:20 17 Does that mean one person?

09:46:23 18 A. In that period of time, yes.

09:46:24 19 Q. And who was that person?

09:46:26 20 A. A gentleman by the name of Ben Dillon who was
09:46:29 21 at Macromedia.

09:46:30 22 Q. And was that -- was he at Macromedia before --
09:46:33 23 I'm sorry, was he at Macromedia after Adobe bought
09:46:37 24 Macromedia?

09:46:38 25 A. I believe so, yes.

09:46:39 1 Q. But my question is, do you deny that beginning
09:46:50 2 no later than May 2005, Apple requested an agreement
09:46:53 3 from Adobe to refrain from cold calling each other's
09:46:56 4 employees?

09:46:58 5 MR. RILEY: Objection to the form of the
09:46:59 6 question.

09:47:02 7 THE WITNESS: I don't know about that. I just
09:47:05 8 don't know about that.

09:47:15 9 MR. SAVERI: Q. Did you ever discuss that
09:47:17 10 subject with Ms. Lambert?

09:47:18 11 MR. RILEY: Objection. The question is vague.

09:47:23 12 THE WITNESS: I believe we may have discussed
09:47:24 13 it on occasion. Adobe -- it was a porous -- during a
09:47:34 14 period of time, there was sensitivity about cold calling
09:47:37 15 into Adobe because of our strategic relationship. That
09:47:41 16 was ambiguous to me and to some recruiters, and I did
09:47:47 17 not want to go out of my way to spend a lot of time
09:47:53 18 clarifying that because we were -- we were successfully
09:47:58 19 recruiting out of Adobe.

09:48:00 20 MR. SAVERI: Q. Did you discuss that
09:48:02 21 subject with Ms. Lambert?

09:48:05 22 And when I say "that subject," I mean the --
09:48:09 23 let me -- let me withdraw the question.

09:48:12 24 Was Apple -- excuse me.

09:48:13 25 Was Adobe on the no-cold-calling list that

09:48:16 1 you've maintained?

09:48:18 2 A. There was a period of time that I believe Adobe

09:48:19 3 was on that list.

09:48:21 4 Q. Who told you to put Adobe on the list?

09:48:25 5 A. I don't recall.

09:48:26 6 Q. Was it Ms. Lambert?

09:48:30 7 A. Don't recall if it was Ms. Lambert or

09:48:34 8 Mr. Okamoto.

09:48:37 9 Q. Was there a point in time when Adobe was taken

09:48:40 10 off that list?

09:48:49 11 A. I believe there was a time that Adobe was taken

09:48:50 12 off the list.

09:48:52 13 Q. When?

09:48:52 14 A. I don't recall.

09:48:53 15 Q. Did you take Adobe off the list?

09:49:02 16 A. If Adobe was taken off the list, it would have

09:49:04 17 come by my direction.

09:49:05 18 Q. Who gave you direction to take Adobe off the

09:49:08 19 list? Did you decide yourself?

09:49:11 20 A. The -- this is porous. So this --

09:49:17 21 Q. I'm sorry, I don't mean to interrupt you. When

09:49:20 22 you say "porous," I want to make sure I understand what

09:49:22 23 you mean by that.

09:49:24 24 A. What I mean by that is I think there may be a

09:49:27 25 sense that this was very black and white, or there is a

09:49:30 1 specific date in which this just gets cut off, a light
09:49:34 2 switch gets turned on or turned off, and that's just not
09:49:36 3 how it worked.

09:49:38 4 If, when Adobe was on that no-cold-call list,
09:49:42 5 it may have been on there for some time, but the reality
09:49:47 6 is recruiting had never stopped, and it was very
09:49:50 7 difficult to keep track of when cold calls were actually
09:49:57 8 made. And it is my understanding that Adobe, at some
09:50:02 9 points in time, was viewed as not as an important
09:50:07 10 strategic as it once was. And it fell off the list at
09:50:11 11 some point in time.

09:50:13 12 Q. When you say "fell off," I mean, you maintain
09:50:14 13 the list; right?

09:50:17 14 MR. RILEY: Objection. Misstates his
09:50:22 15 testimony.

09:50:22 16 MR. SAVERI: Q. Did you maintain the
09:50:24 17 no-cold-calling list?

09:50:26 18 A. It was organic. I -- as the head of
09:50:28 19 recruiting, that list was under my jurisdiction.

09:50:31 20 Q. And who instructed you to remove Adobe from
09:50:35 21 that list?

09:50:37 22 A. I don't recall.

09:50:38 23 Q. And do you recall when you were instructed to
09:50:40 24 take Adobe off the list?

09:50:42 25 A. I don't recall.

1 I, Gina V. Carbone, Certified Shorthand
2 Reporter licensed in the State of California, License
3 No. 8249, hereby certify that the deponent was by me
4 first duly sworn and the foregoing testimony was
5 reported by me and was thereafter transcribed with
6 computer-aided transcription; that the foregoing is a
7 full, complete, and true record of said proceedings.

8 I further certify that I am not of counsel or
9 attorney for either of any of the parties in the
10 foregoing proceeding and caption named or in any way
11 interested in the outcome of the cause in said caption.

12 The dismantling, unsealing, or unbinding of
13 the original transcript will render the reporter's
14 certificates null and void.

15 In witness whereof, I have hereunto set my
16 hand this day: July 6, 2012.

17 ___X___ Reading and Signing was requested.

18 _____ Reading and Signing was waived.

19 _____ Reading and signing was not requested.

20

21

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GINA V. CARBONE

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CSR 8249, RPR, CCRR

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